

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
TOWNSHIP OF CINNAMINSON, NEW)	File No. 0002369035
JERSEY)	
)	
Request for Waiver Pursuant to Section 337(c) of)	
the Communications Act of 1934, as amended,)	
and Section 1.925 of the Commission's Rules)	

ORDER

Adopted: March 6, 2007

Released: March 7, 2007

By the Chief, Policy Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. We have before us an application and associated waiver request filed by the Township of Cinnaminson, New Jersey (Cinnaminson) to modify its public safety radio communications system by adding two Part 22¹ paging control frequencies in the 470-512 MHz band.² Cinnaminson is currently licensed to operate Station WIL992 with four frequency pairs³ in the UHF Band.⁴ Pursuant to Section 337(c) of the Communications Act of 1934, as amended (the Act),⁵ and Section 1.925 of the Commission's rules,⁶ Cinnaminson seeks a waiver of Sections 22.7, 22.501, 22.621, 22.651, and 90.311 of the Commission's rules⁷ to enable it to use frequencies not designated for public safety use. For the reasons stated below, we deny Cinnaminson's Waiver Request and dismiss the application without prejudice.

II. BACKGROUND

2. Cinnaminson states that, following September 11, 2001, it undertook several initiatives to strengthen its emergency preparedness and ability to respond to potential natural disasters such as hurricanes and floods.⁸ Cinnaminson states that its comprehensive transportation infrastructure and its

¹ 47 C.F.R. Part 22.

² See FCC File No. 0002369035 (filed Nov. 3, 2005), and accompanying Request for Waiver (Waiver Request). Cinnaminson requests to add frequencies 506.0125 and 509.0125 MHz.

³ Station WIL992 operates on frequency pairs 502/505.9000, 508/511.3000, 508/511.3500, and 508/511.9375 MHz.

⁴ Frequencies in the 300 MHz to 3 GHz range are Ultra High Frequencies (UHF), but land mobile frequencies in the 450-512 MHz range are sometimes known as the land mobile "UHF Band." See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Notice of Proposed Rule Making*, 14 FCC Rcd 5206, 5215 ¶¶ 11-12 (1999).

⁵ 47 U.S.C. § 337(c).

⁶ 47 C.F.R. § 1.925.

⁷ 47 C.F.R. §§ 22.7, 22.501, 22.621, 22.651, 90.311.

⁸ Waiver Request at 1.

close proximity to Philadelphia, Pennsylvania, present the township with serious challenges in deterring and responding to acts of terrorism and other emergency situations.⁹ Cinnaminson states that it is working closely with county, state, and federal agencies in preparing and implementing an emergency preparedness plan to address these challenges.¹⁰ Cinnaminson argues that this waiver request to use UHF frequencies currently designated for other purposes is a critical element of the township's emergency-preparedness plan.¹¹

3. Frequencies in TV Channels 19 and 20 are available for land mobile radio and paging assignment in the Philadelphia metropolitan area.¹² Cinnaminson states that spectrum resources do not currently exist in that UHF Band to provide for interoperable communications with other governmental organizations within the Philadelphia metropolitan area.¹³ In its Waiver Request, Cinnaminson proposes to dedicate frequency pair 506/509.0125 MHz for use in the area of the Township of Cinnaminson to allow counties and cities surrounding Philadelphia and Trenton, New Jersey to communicate with Cinnaminson's existing radio system in the same UHF Band.¹⁴ Accordingly, Cinnaminson requests a waiver of Sections 22.7, 22.501, 22.621, 22.651, and 90.311 of the Commission's rules.¹⁵

III. DISCUSSION

4. Section 337(c) of the Act provides that the Commission must waive any rules necessary to authorize entities providing public safety services to operate on unassigned non-public safety spectrum, if the Commission makes five specific findings:

- public safety spectrum is not immediately available;
- the proposed use will not cause harmful interference to protected spectrum users;
- public safety use of the unassigned frequencies is consistent with public safety spectrum allocations in the geographic area;
- the unassigned frequencies have been allocated for non-public safety use for two or more years; and
- grant of the application is consistent with the public interest.¹⁶

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 2.

¹² See 47 C.F.R. § 90.303(b).

¹³ Waiver Request at 2.

¹⁴ *Id.* at 3.

¹⁵ Waiver Request at 1. Section 22.7 allows any entity, other than those precluded by Section 310 of the Act, 47 U.S.C. § 310, to hold a license under Part 22. Section 22.501 defines the scope of the licensing and operation of the Public Paging and Radiotelephone Service. Section 22.621 sets forth frequencies, some of which are in the 470-512 MHz Band, that are available for point-to-multipoint systems. Section 22.651 sets forth frequencies in the 470-512 MHz Band that are available for trunked mobile operation. Section 90.311 provides the specific frequency ranges within certain TV channels available for assignment to land mobile radio users in thirteen urbanized areas of the United States.

¹⁶ See 47 U.S.C. § 337(c).

5. When considering requests under Section 337, we must first determine whether the applicant is “an entity seeking to provide public safety services.”¹⁷ The statute describes public safety services as services that are provided by state or local government entities or by non-governmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services.¹⁸ Cinnaminson seeks to develop a region-wide interoperable wireless communications capability to enhance incident command communications for its public safety agencies.¹⁹ Accordingly, based on the record, we conclude that Cinnaminson is an entity providing public safety services. Next, we turn to whether Cinnaminson satisfies the other statutory requirements supporting a waiver under Section 337(c) of the Act.

6. As an initial matter, we note that an applicant’s failure to meet a single criterion of Section 337(c) of the Act constitutes sufficient cause for the Commission to deny a request for waiver.²⁰ As discussed below, we find that Cinnaminson has not met the second criterion of Section 337(c) of the Act. We therefore deny the waiver request.

7. *The proposed use will not cause harmful interference to protected spectrum users.* Cinnaminson’s showing under the second criterion contains inaccuracies and lacks specificity to support Cinnaminson’s frequency request.²¹ For example, Cinnaminson’s discussion of interference protection to TV stations operating on TV Channels 14, 15, and 16²² (which relate to various areas outside of the Philadelphia metropolitan area) is irrelevant because Cinnaminson requests frequencies in the TV Channel 19 Band (which relates to the Philadelphia metropolitan area). Cinnaminson also makes vague statements that land mobile radio operations on adjacent channels were examined, and that the interference power of its signals will not be detectable.²³ However, Cinnaminson has neither submitted a technical analysis to support these statements nor made any assertions specific to frequency pair 506/509.0125 MHz with regard to interference protection of existing paging control operations. We

¹⁷ *Id.* Section 337(f) defines the term “public safety services” as “services—
(A) the sole or principal purpose of which is to protect the safety of life, health, or property;
(B) that are provided—
(i) by State or local government entities; or
(ii) by non-governmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and
(C) that are not made commercially available to the public by the provider.” *Id.*

¹⁸ *Id.*

¹⁹ Waiver Request at 2.

²⁰ See University of Southern California, *Memorandum Opinion and Order*, 16 FCC Rcd 2978, 2984 ¶ 15 (WTB PSPWD 2001) (*University of Southern California*).

²¹ See Waiver Request at 3-4. We observe that Cinnaminson’s showings for this criterion and the first criterion appear to be nearly identical to respective analyses from another waiver request submitted by the Attorney General of New Jersey in 2004. See FCC File No. 0001855197 (filed Aug. 26, 2004 by the Attorney General of New Jersey), attached Request for Waiver at 7-9. As explained herein, Cinnaminson needs to submit a detailed showing under Section 337(c) of the Act that is particular to its situation and supported by sufficient technical information. See, e.g., City of Chicago, *Order*, 21 FCC Rcd 8785 (WTB PSCID 2006) (granting waiver request pursuant to a finding that all five criteria set forth under Section 337(c) of the Act were satisfied).

²² See Waiver Request at 3-4.

²³ *Id.* at 4.

therefore conclude that Cinnaminson has not satisfied the second prong our analysis, and therefore do not address the remaining four prongs of our analysis under Section 337(c) of the Act.²⁴

IV. CONCLUSION

8. Based on the record before us, we conclude that Cinnaminson's waiver request fails to satisfy the second criterion set forth in Section 337(c) of the Act. Accordingly, we deny the Waiver Request and dismiss the application without prejudice.

V. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, and Sections 4(i) and 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 337(c), the request for waiver associated with the captioned application filed by the Township of Cinnaminson on November 3, 2005, IS DENIED, and File No. 0002369035 IS DISMISSED consistent with this *Order* and the Commission's rules.

10. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Dana Shaffer
Chief, Policy Division
Public Safety and Homeland Security Bureau

²⁴ See *University of Southern California*, *supra* note 20. We caution Cinnaminson against drawing any inference from our decision that the remaining four Section 337(c) criteria, unaddressed by this order, have been satisfied by Cinnaminson.